

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY HARDY,

Plaintiff,

Case No. 02-40255

vs.

HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

ROBERT VIETA,

HONORABLE STEVEN D. PEPE
UNITED STATES MAGISTRATE JUDGE

Defendant.

_____ /

**ORDER REGARDING PLAINTIFF'S
REQUEST FOR LEAVE TO SEEK INTERLOCUTORY APPEAL (DKT. #141)
AND
ORDER CHANGING THE DOCKET CAPTION OF DKT #141.**

On October 4, 2002, Plaintiff Gregory Hardy filed a *pro se* civil rights complaint, pursuant to 42 U.S.C. §1983, alleging assault, harassment, intimidation and violations of the First and Eighth Amendment. All pretrial proceedings have been referred pursuant to 28 U.S.C. §636(b)(1)(A) and (B). Plaintiff has filed a motion for leave to seek an interlocutory appeal (Dkt. #141) of an order denying his request to amend his complaint (Dkt. #136). For the reasons stated below, Plaintiff's motion will be treated as the timely filing of objections to this denial, and IT IS ORDERED that the Clerk's Office will amend and supplement the current Docket Entry for Dkt. #141 by adding "Ordered to be Treated as a Timely Objection to Dkt. #136 by order of January 31, 2007 (Dkt. # (insert the appropriate new docket number here)))."

The undersigned denied Plaintiff's request to amend his complaint on October 31, 2006 (Dkt. #136). Pursuant to the Federal Rules of Civil Procedure, Plaintiff had 10 days within which to

object to this order. Fed. R. Civ. P. 72. On November 13, 2006, which falls within the ten day time period pursuant to Fed. R. Civ. P. 6, Plaintiff filed the present motion which is captioned as a motion for a certificate for leave to file an interlocutory appeal (Dkt. # 141).

In this motion Plaintiff cites "E.D.Mich. LR 72.3(c)".¹ It is assumed Plaintiff meant to refer to E.D.Mich. LR 72.1(d), the provision which allows for filing an objection to a magistrate judge's ruling with the district court, because there is no E.D.Mich. LR 72.3(c) nor any local rule pertaining to filing interlocutory appeals. In addition, the relief Plaintiff requested is not leave to appeal to the Sixth Circuit but a request that his motion to amend be granted on the merits. All of this leads the undersigned to believe that Plaintiff has mis-captioned his motion. It appears that Plaintiff is attempting to object to the undersigned's order denying him leave to amend and not seeking interlocutory appeal.

Therefore, IT IS ORDERED that Plaintiff's motion for a certificate for leave to file an interlocutory appeal shall be treated as a timely objection to the undersigned's October 31, 2006, order, that the Clerk's Office will amend and supplement the current Docket Entry for Dkt. #141 by adding "Ordered to be Treated as a Timely Objection to Dkt. #136 by order of January 31, 2007 (Dkt. # (insert the appropriate new docket number here))."

Dated: January 31, 2007
Flint, Michigan

s/Steven D. Pepe
United States Magistrate Judge

¹ The numbering used by Plaintiff, 72.3, coincides with the Northern District of Ohio's local court rule provision pertaining to objections to magistrate rulings. Plaintiff is advised that each district court may adopt its own local rules and these are not enforceable in any other district.

Certificate of Service

I hereby certify that on January 31, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Kevin R. Himebauch and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participant: Gregory Hardy, #252393, Bellamy Creek Correctional Facility, 1727 W. Bluewater Hwy., Ionia, MI 48446.

s/James P. Peltier
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